

REMARKS

Claims 43 to 47, 50, 53 to 59, 62 to 89, 96 to 99 and 102 to 158 would be pending in the application if the above amendments were entered. Applicants thank Examiner Choi for his time to conduct a telephone interview on September 14, 2005. The pending claims and potential amendments were discussed. The amendments described above seek to revise the claims along the lines discussed during the interview. Specifically, applicants propose to cancel claims 60, 61, 90 to 95, 100 and 101 without prejudice, to amend claim 64 to recite gaseous carbon monoxide and to add new claims 141 to 158 to the application. Proposed new dependent claims 141 to 158 recite that the compositions recited in the independent claims from which they depend comprise gaseous carbon monoxide. The amendment and new claims are supported throughout the application and add no new matter.

All amendments set forth above would raise no new issues that would require further consideration and/or search. Applicants submit that these amendments would place the claims into condition for allowance, or at least present the rejected claims in better form for consideration on appeal, and should therefore be entered after the final rejection under 37 C.F.R. § 1.116 (a).

Allowable Claims

Applicants acknowledge the Examiner's finding that claims 43 to 47, 50, 53 to 59, 62, 63, 65 to 78, 89, 96 to 99, 102, 104 to 115 and 118 to 140 are allowable.

Withdrawn Rejections

While the examiner did not explicitly withdraw any previous objections or rejections, applicants assume that all prior objections and rejections not reasserted in the present Office Action are withdrawn. Thus, applicants acknowledge the withdrawal of the following:

- (a) The objections to the specification for various alleged informalities;
- (b) The objection to claims 53 to 55, 98, 99, 102, 104, 106, 108, 110, 112 to 114, 118 and 120 as depending from a rejected base claim;

- (c) The rejection of claims 42 to 47, 50, 56 to 78, 89 to 97, 100, 101, 105, 107, 109, 111, 115 to 117 and 119 under 35 U.S.C. § 112, first paragraph, for an alleged lack of enablement;
- (d) The rejection of claims 42 to 47, 50, 53 to 78, 89 to 97, 105, 107, 109, 111, 115, 117 and 119 under 35 U.S.C. § 112, second paragraph, as allegedly failing to set forth the subject matter that applicants regard as their invention;
- (e) The rejection of claims 42 to 47, 50, 53, 62, 65, 67, 104 and 108 under 35 U.S.C. §102 (a) as allegedly anticipated by or, in the alternative, under 35 U.S.C. §103 (a) as allegedly obvious over Otterbein et al.; and
- (f) The rejection of claims 42 to 47, 50, 53, 62, 65, 67, 104 and 108 under 35 U.S.C. §102 (f).

Claim Objection

The Office Action objected to claim 103 for depending from rejected claim 64. Applicants submit that their proposed amendment to claim 64 would obviate the present objection. Accordingly, applicants request that the amendment to claim 64 be entered and that the present objection be withdrawn.

Rejection Under 35 U.S.C. §§ 102 (b) and 103

Claim 64 was rejected as allegedly anticipated by, or in the alternative, obvious in view of, PCT application WO95/35105 (Herrmann et al.). As an initial matter, applicants point out that WO95/35105 is written in German. Applicants have, therefore, reviewed and addressed herein U.S. Patent No. 5,882,674 (the U.S. National Phase application of WO95/35105) in lieu of this PCT application. Applicants notified Examiner Choi of this fact during the September 14, 2005 interview.

During the interview, Examiner Choi indicated that Herrmann should have been applied to claim 64 solely under 35 U.S.C. §103 and not 35 U.S.C. §102. Applicants respectfully disagree with the present rejection and submit that Herrmann neither anticipates nor renders obvious claim 64. However, in the interest of moving the present application toward allowance,

applicants propose to amend claim 64 to recite gaseous carbon monoxide (CO). Herrmann, being a reference that describes a transdermal therapeutic system that includes carbon monoxide-releasing compounds, does not describe or suggest using gaseous carbon monoxide to treat any disorder, much less inflammation of the kidney, spleen or skin. Accordingly, applicants respectfully request that the proposed amendment and new claims be entered and that the present rejection be withdrawn.

The Office Action maintains the rejection of claims 60, 61, 90 to 95, 100, 101, 116 and 117 as allegedly obvious over Maxwell et al. (*J. Pharmacol.*, 49:270-282 (1933)) in view of Campbell (*Brit. J. Exp. Path.*, 15(5):287-294 (1934)). Applicants disagree and maintain that the Office has not established that the claims are obvious over this combination of publications. These claims are patentable over Maxwell and Campbell for the reasons discussed in applicants' arguments of record. However, in the interest of moving the present application toward allowance, applicants propose to cancel claims 60, 61, 90 to 95, 100, 101, 116 and 117 without prejudice. Applicants reserve the right to pursue these claims in unamended form in one or more continuation applications. Accordingly, applicants request that the amendments to the claims be entered and the present rejection be withdrawn.

Applicant : Choi et al.
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Page : 19 of 19

Attorney's Docket No.: 13681-003002

CONCLUSION

Applicants request that the claim amendments be entered and that all claims be allowed. Enclosed is a check for \$120 for the Petition for Extension of Time fee for a one-month extension. Please apply any other charges or any credits to Deposit Account No. 06-1050, referencing Attorney Docket Number 13681-003002.

Respectfully submitted,

Date: 1/16/05



Todd E. Garcia, Ph.D.
Reg. No. 54,112

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906
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